



TAX SEMINAR-NORTH RIFT BRANCH

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Recent KRA's Aggressive Audit: What is in for me?

Agenda



- Introduction; Why tax audits, levels of compliance etc.
- Aggressive tax audits and assessments.
- *Dealing with* a tax audit.

Introduction



The main objective of a revenue audit is to promote voluntary compliance; This is done to;

- ❖ Determine the accuracy of a return, declaration of tax liability or claim for repayment, set off or refund.
- ❖ Collect the tax, interest and penalties where appropriate
- ❖ Specify remedial action where errors or irregularities are discovered
- ❖ Consider what procedures or changes are necessary to facilitate counter-evasion activities
- ❖ Evaluate and recommend for prosecution where strong indication of serious tax evasion/avoidance

Current Compliance Landscape



- Include, Compliance levels I,II or Investigations
- Types of audits;
 1. Full audits – The scope of a full audit is all encompassing.
 2. Limited scope audits – Limited scope audits are confined to specific issues on the tax return and/or a particular tax scheme arrangement employed by the taxpayer.
 3. Single issue audits – Single issue audits are confined to one item of potential non-compliance that may be apparent from examination of a taxpayer's return.

Aggressive Tax Audits- Key areas



- ❖ Corporation tax (Chargeability, accrued, allowability and reconciliation issues)
- ❖ VAT has including VAA (mismatches), Missing trader, ETR, Registration etc.
- ❖ PAYE (expatriates, part-timers, foreigners, allowances such as non cash, employee vs consultant debate etc)
- ❖ Withholding tax, (rate for resident and non-resident, definitions of professional and management, due date etc)

Aggressive audit areas



- ❖ Pensions (Registered vs unregistered, exemptions, treating excess contributions etc.)
- ❖ Excise (Rates, financial sector and the issue of defining interest, excise stamps, flow meters and the system)
- ❖ Capital Gains Tax (Due date, what is taxable, exemptions and its procedures, Business and CGT definitions...
- ❖ Customs including misdeclarations, exports and exemptions, TREOs, EPZs, Restricted goods and prohibitions.

Key Areas Contd.



- ❖ Advance Tax, due date and correct rates.
- ❖ Stamp duty and excise duty stamps.
- ❖ Betting, gaming and lotteries tax, Withholding taxes, excise taxes etc.
- ❖ Agency taxes such as Kebs levy and sugar development levy.
- ❖ Investment deduction and capital allowances in General... Rates, qualifying costs, when first used, when used etc.

Dealing with Tax audits



Key note;

The best way to prepare for tax audits is never to be audited at all.

Answer

This is because human is to err.

Legislative Provisions



- The power to audit is a delegated power from the commissioner according to Tax procedures Act, 2015.
- The authority can access premises, books, records and other information under Sec 58,59 and 60 of the TPA 2015.
- The authority has been granted further powers of a police office.

Typical audit process



- Notification of an intention to audit
- Entry interview
- Tour of premises
- Examination of records, books and obtaining copies of such.
- Discussing the finding and reconciliations or evidence as necessary.
- Closing/Exit interview or meeting
- Notifications of audit findings
- Objection and appeals or ADR.

Rights before and during audits



- To be treated with courtesy and consideration during the audit including identification in accordance to **The constitution of Kenya, 2010**; Chapter 4 part 1-3 deals with the bill of rights, rights and fundamental freedoms etc.
- Presumption of honesty where books are examine objectively.
- A taxpayer has a right to ask and obtain information sought for including right to be heard fairly in accordance with the **Fair Administration of Justice Act 2015**. Sec 4 of the act requires administration action to be taken expeditiously, efficiently, lawfully, reasonably and procedurally fair.
- Impartial and integrity and what is due should be payable and t taxman cannot take what I not properly due.

Rights contd.



- To be treated with confidentiality and privacy according to Sec 6 of the TPA 2015
- Right to objection and appeal in accordance to sec 49-57 of the TPA covering Objecting, tax appeals Tribunal, high court and the court of appeal.
- Right to alternative dispute resolution also known as ADR Sec 55
- Right to appoint a tax agent or representative Sec 15 and 19 of the TPA 2015. Its key to seek the expertise of professionals.

Rights Contd.



- To be granted an extension to pay tax Sec 33-35 of the TPA
- To apply for waiver of penalties and interest Sec 89(6)
- Refund of overpaid tax Sec 47-48 of the Act.
- To a public or private ruling on application as detailed in Sec 62-69 of the TPA 2015.

Obligations of a taxpayer



- Register for a tax obligation Sec 8 of the TPA
- Keep proper books of account/entries according to Sec 23 of the TPA 2015
- To provide declarations Sec 24-28 of the TPA 2015
- Pay the correct amount of tax

Other salient issues



- Timing of assessments.

Whereas normal assessments are carried out over 5 years as required under Sec 31 of the TPA, the audits can be cover longer periods owing to tax evasion, false returns, non-returns etc.

- Cooperation during audits

Cooperate legally with the officer handling the matter without compromising on *integrity*.

Produce documents and answer relevant queries during the audit.

Others...



- **Review of records**

Review records regularly ensure compliance. Some do engage professionals to do compliance checks and pay any taxes if due.

- **Strengthen internal audit functions**

By having relevant and qualified staff to handle tax matters professionally on a timely basis. They can also handle emerging issues as well.

